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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,445	03/19/2001	Kenjiro Matoba	OKI 273	7189

23995 7590 10/18/2005

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EXAMINER	
FLANDERS, ANDREW C	

ART UNIT	PAPER NUMBER
2644	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/810,445	**Applicant(s)** MATOBA, KENJIRO	
	Examiner Andrew C. Flanders	**Art Unit** 2644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1, 3-6, 8-16*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Attached Remarks.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

VIVIAN CHIN
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By

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 20 September 2005 have been fully considered but they are not persuasive.

Applicant alleges "claim 1 refers to varying the amplitude of units of data in a data block, not varying the amplitude of a data block. Davis searches for a window position that conforms the waveforms that are to be joined, without increasing or decreasing the audio data itself."

Examiner agrees with the applicants statement. However, Applicant fails to acknowledge that Davis, by moving the window, the units of data within the window are effectively increased or decreased. For example, if I have a digital signal with the values 1 – 2 – 3 – 4 – 5 – 6 and I have a window that has the ability to contain 3 samples, as I move the window through the sequence it will first be 1 – 2 – 3 then will be 2 – 3 – 4 then 3 – 4 – 5 and so on. The first data unit in the window is 1, then 2 then 3 respectively. As such, as the window is moved, the individual units of data within the window are varied.

Applicant further alleges "Davis does not change his sequence of data by calculation in order to achieve a smooth concatenation between data blocks. Instead,

Davis achieves a smooth concatenation by adjusting the point on one waveform where it is to be joined to another waveform."

Examiner respectfully disagrees. As was shown in the rejection of claim 2 in the final rejection, the splice point is determined based upon slope change. Applicant argues that this is not calculation. However, Dictionary.com (enclosure) offers a definition of calculate as "to make an estimate of; evaluate" Davis is determining the slope change thus evaluating and this reads upon the terminology of calculating, contrary to applicants allegation.

Applicant further alleges "Davis has no teaching of starting out with equal-size data blocks, and furthermore his data blocks change in size during Davis' splicing operation due to his moving window."

Examiner respectfully disagrees with this allegation. As stated in the previous rejection, the data blocks limitation in claim 11 is read upon the digital sample disclosed by Davis. Audio sequences are often represented by digital samples in a number form signifying their amplitude. For example, if an audio wave had an amplitude that started at 0, rose to 3 and dropped to 0 again in a parabolic manner, and the analog wave was sampled 5 times at 0, 2, 3, 2, 0 then quantized into digital bits; the sequence would read 00, 10, 11, 10, 00. Thus each of these digital samples (which are blocks of data representing an analog wave) are considered to read upon the limitation of data blocks. It is inherent that the digital samples out start out with equal size data blocks (in the example each block has 2 bits, i.e. 2 units of data). If they did not it would not be

possible to recreate the analog signal correctly. Thus as stated before, moving the window does not actually change the number of data blocks, it is the amount of blocks that differ. Much like Applicant's claim 11.

Applicants allegations regarding Figs. 1c and 1d are moot for the same reasons stated above regarding the data blocks. Further the amplitude between Figs. 1C and 1D is different because 1C is the prior art, not from the Davis invention.

Applicant further alleges "The "Response to Arguments" section suggests that the data blocks of claim 1 can be interpreted as the digital samples in Davis. Such an interpretation is not tenable. First, this is not at all how an ordinarily skilled person who had read the present application would interpret the term "data blocks." Claim language can be interpreted broadly during prosecution, but only as broadly as is reasonably possible. It is respectfully submitted that interpreting "data blocks" as samples would be unreasonable in the context of the present invention."

Examiner respectfully disagrees with this allegation. While Examiner does agree that Applicant's specification provides definition of the data blocks as multiple samples, this limitation is not included in the claim language. Furthermore, Examiner maintains that it is reasonable to read the data blocks as a digital sample, which, as shown above contains multiple bits (i.e. data).

Applicant further questions, "Just what would be the "units of data" in Davis' samples? Individual bits?.

Examiner respectfully submits that this is the interpretation, as if further shown above.

Applicant further questions "Then what would become of the recitation, in claim 11, of 'a conversion unit for varying the amplitude of units of data..."?

Examiner respectfully submits that the variation of the window varies the units of data. AS shown above in the example, moving the window varies the amplitude of the digital sample to be spliced, thereby varying the amplitude of the data block to be spliced.